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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,042	12/09/2003	Matthew Bullock	10.065.023	3001

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EXAMINER

GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/730,042

Applicant(s)

BULLOCK, MATTHEW

Examiner

Stephen Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 20-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Applicant timely traversed the restriction (election) requirement in the reply filed on 1-18-05.

2. Applicant's election with traverse of group I in the reply filed on 1-18-05 is acknowledged. The traversal is on the ground(s) that the claim groups are not patentably distinct. This is not found persuasive because the inventions are deemed distinct and properly restrictable for the differences detailed in the last office action – see paragraph 2 of the action mailed 1-3-05. Applicant is reminded that it is the evidence claims that are relied upon for purposes of determining restriction.

The requirement is still deemed proper and is therefore made FINAL.

3. It is requested that applicant cancel non-elected claims 20-22 in response to this action to facilitate the issue process if the application is ultimately allowed.

4. Figure 1 should apparently be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numbers 76 and 84 (both in paragraph 56 of the instant specification text). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The use of the trademarks KEVLAR and MYLAR have been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

6. The disclosure is objected to because of the following informalities: paragraph 1 – line 5, "6607,337" should include a comma after the first "6". Paragraph 44 – line 2,

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"docked" is misspelled. Paragraph 44 – line 5, "containers 10" should be –containers 12--. Paragraph 46 – line 8, "cargo" is misspelled. Paragraph 55 – line 3, "82" should be –80--.

Appropriate correction is required.

7. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 1, "said load restraint strip" in line 3 should be –said load restraining strip—for consistency/clarity. Line 12 is somewhat confusing, and "a second side" could be replaced with –said second side—to clarify the claim in this regard as best understood. In lines 15-16, "said second surface of said first adhesive layer" lacks clear antecedent basis, and "surface" in the term should apparently be –side—to correct this defect. In line 16, "said first surface" lacks clear antecedent basis, and "surface" in the term should apparently be –side—to correct this defect. In lines 19-20, "said second layer of reinforcement strands" lacks clear antecedent basis, and "strands" in the term should apparently be –material—to correct this defect. In lines 21-22, "the second" lacks clear antecedent basis, and "surface" in the term should apparently be –side—to correct this defect.

Re claim 2, "said first...reinforcement" bridging lines 2 and 3 lacks clear antecedent basis, and –material—should apparently be inserted after

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"reinforcement" of the term to correct this defect. Line 4 is somewhat confusing, and "crossing" could be replaced with —ones of said crossing—to clarify the claim in this regard as best understood. In line 5, "the spacing" lacks clear antecedent basis, and "the" could be deleted from the term to correct this defect as best understood. Line 6 is somewhat confusing, and "of said" could be replaced with —of ones of said— to clarify the claim in this regard as best understood.

Re claim 3, "said first...reinforcement" bridging lines 2 and 3 lacks clear antecedent basis, and —material—should apparently be inserted after "reinforcement" of the term to correct this defect. In line 4, "said first and outer surface" is confusing and could be written as —an outer surface—for clarity as best understood.

Re claim 4, the use of the trademark —Mylar— in the claim is improper.

Applicant should rely on the generic terminology for such material in the claim language.

Re claim 7, line 3 is somewhat confusing, and "each of said strands of" could be replaced with —strands of said—to correct this defect as best understood.

Re claim 15, the use of the trademark —Kevlar— in the claim is improper.

Applicant should rely on the generic terminology for such material in the claim language.

Re claim 16, the use of the trademark —Kevlar— in the claim is improper.

Applicant should rely on the generic terminology for such material in the claim language.

Re claim 17, "laminated" in the first line should be deleted for consistency/clarity.

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Re claim 18, the use of the trademark –Mylar— in the claim is improper.

Applicant should rely on the generic terminology for such material in the claim language.

Additionally, “said substrate” in line 2 lacks clear antecedent basis and should apparently be –said substrate material—for clarity.

Re claim 19, “said third layer of adhesive” lacks clear antecedent basis and “of said third...adhesive” in the last line could be deleted to correct the claim in this regard.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1+ are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7+ of copending Application No. 10/730,040. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 7 of the '040 application includes all the features of the instant claim 1 and merely adds features/details – e.g. functional language relating to corrugated walls, multiple transverse strips of the second adhesive layer, and multiple associated release paper strips for the strips of the second adhesive

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layer. To arrive at the invention recited in instant claim 1, it would have been obvious to one of ordinary skill in the art to merely remove the extra limitations included in claim 7 of the '040 application. Moreover, applicant should note, patenting of both the instant claim 1 and claim 7 of the '040 application would potentially allow applicant unfair extension of monopoly for the overlapping portions of coverage – noting the instant claim 1 is a broader version of claim 7 of the '040 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

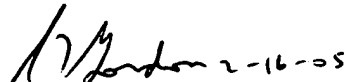
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least Blatt teaches an adhesive attached container load retaining barrier structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen Gordon  
Primary Examiner  
Art Unit 3612

stg